

Mr. Robert D. Hutcherson
Page Two

750-foot primary zone and minimum 750-foot secondary zone would still mean that the tower would be well within the secondary zone, with guy wires perhaps well within the primary zone, and as such would not be consistent with the guidelines. Moreover, towers such as that planned constitute a profound, imposing alteration of a given territory and, along with their associated guy wires, a significant navigational hazard, so at least the secondary zone boundary should in fact approach the maximum one-mile called for. Enclosed for your reference are copies of two letters applying the guidelines in previous similar instances, each of which reflects that necessity.

Because of these reasons, we are in opposition to the tower being constructed as planned and strongly recommend an alternative site be selected. To proceed otherwise would very likely result in nest abandonment, disrupted or discontinued reproduction, and/or death to a resident eagle, and thereby "disturbance, harassment, harm, molestation and/or take" (the operative prohibitions, collectively, in the four laws protecting bald eagles and their nests) will have occurred.

Thank you for consulting us in this matter and for your interest in accommodating the welfare of Florida's threatened wildlife resources.

Sincerely,



Frank Montalbano III
Director, Division of Wildlife

666-6/jh9752

ESC 6-1 (Lee County)

Enclosures

cc: Mr. David Wesley
Mr. David Ferrell
Lt. Colonel J. O. Brown
Mr. Brad Hartman
Mr. Tim O'Meara
Mr. Steve Nesbitt
Mr. Paul Schulz
Ms. Kim Dryden
Mr. Rick Mraz

MORRIS-DEPEW ASSOCIATES, INC.

ENGINEERS • PLANNERS • ENVIRONMENTAL SCIENTISTS

September 11, 1990

Mr. Don Wood
Endangered Species Coordinator
Florida Game and Fresh Water Fish Commission
Ferris Bryant Building
620 South Meridan Street
Tallahassee, FL 32399-1600

RE: Ruth Communications/Southern Bald Eagle's Nest-LE-18a

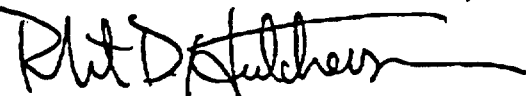
Dear Mr. Wood:

We have received your agency's response to our proposal for the above referenced communications tower on Pine Island in Lee County. It is apparent from your letter that our proposal was not completely understood as the distances quoted are not as we had planned. The aerial photograph depicts the nest site with a buffer area extending 750' from the nest in all directions. The corner of the property upon which the tower is proposed is approximately 800 feet from the nest with the tower and guy wires falling entirely within the site. The tower itself is 450' into the property, a distance of approximately 1300' from the nest.

Additionally, we urge you to consider our proposal for a treatment of the guy wires and tower, using methods that have been proven as successful in protecting birds in accordance with the guidelines. The tower would be lighted with strobe lights (or other acceptable lighting) and the guy wires wrapped or painted along with streamers provided as an additional visual warning. These measures were discussed with the Lee County Eagle Technical Advisory Committee, which seemed receptive to them as solutions to the problem. We believe the measures will protect the birds as well as enable the applicant to provide the service that the FCC has determined to be a demonstrated public need, and we respectfully ask you to consider these proposals.

Sincerely,

MORRIS-DEPEW ASSOCIATES, INC.



Robert D. Hutcherson

RD/kab

FLORIDA GAME AND FRESH WATER FISH COMMISSION

WILLIAM G. BOSTICK, JR.
Winter Haven

DON WRIGHT
Orlando

THOMAS L. HIRES, SR.
Lake Wales

MRS. GILBERT W. HUMPHREY
Miccosukee

JOE MARLIN HILLIARD
Clewiston

ROBERT M. BRANTLY, Executive Director
ALLAN L. EGBERT, Ph.D., Assistant Executive Director



FARRIS BRYANT BUILDING
620 South Meridian Street
Tallahassee, Florida 32399-1600
(904) 488-1960

September 26, 1990

Mr. Robert D. Hutcherson
Morris-Depew Associates, Inc.
1940 Maravilla Avenue
Fort Myers, FL 33901

Mr. Hutcherson:

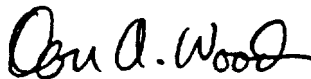
This responds to your 11 September letter regarding the proposed Ruth communications tower on Pine Island, Lee County, as it relates to bald eagle nest LE-18a. I submit several observations regarding the additional information you provided:

1. The proposed tower, even at a distance of 1,300 feet from the nest, and its associated guy wires, would still be well within even a minimum secondary zone configuration. Moreover, as indicated in the letters I provided you previously, a tower of such dimensions would not be consistent with the operative guidelines even at distances two or three times the distance involved here. And compounding the hazard in this instance is the fact that the Ruth tower would be situated at least to some degree within flight paths to and from feeding areas. The corrected distance, therefore, does not affect that particular aspect of our 22 August 1990 application of the guidelines.
2. Eagles do not fly at night, so lighting the tower in any manner would have no effect in terms preventing eagle collisions with either the guy wires or the tower itself.
3. I am unaware of any "...methods that have been proven as successful in protecting birds (in this case bald eagles) in accordance with the guidelines" insofar as towers/guy wires are concerned. I request I be provided that documentation for review and evaluation.

Mr. Robert D. Hutcherson
September 26, 1990
Page Two

For these reasons, the corrected distance and your proposed protective measures would have little if any appreciable mitigative value in terms of the hazards the proposed tower would pose, so reconsidering the basic position conveyed in our 22 August letter would not be appropriate.

Cordially,



Don A. Wood
Endangered Species Coordinator

666-9881/jh
ESC 6-1 (Lee County)
cc: Mr. David Wesley
Mr. David Ferrell
Lt. Colonel J. O. Brown
Mr. Brad Hartman
Mr. Tim O'Meara
Mr. Steve Nesbitt
Mr. Paul Schulz
Ms. Kim Dryden
Mr. Rick Mraz

FLORIDA GAME AND FRESH WATER FISH COMMISSION

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October 16, 1990

Mr. Robert D. Hutcherson
Morris-Depew Associates
1940 Maravilla Avenue
Fort Myers, FL 33901

Mr. Hutcherson:

This responds to your 4 October letter regarding the proposed Ruth communications tower as it relates to bald eagle territory LE-18A, Lee County. A free-standing tower would indeed constitute less of a navigational hazard to eagles than one with guy wires. However, such a redesigned tower would still be well within even a minimum-sized secondary zone, and would be situated somewhat between the nest and the resident birds' feeding area. A significant hazard, both from a navigational and an intrusive/disruptive aspect, would still exist, and, moreover, those two factors, in and of themselves, render its construction inconsistent with the "Habitat Management Guidelines for the Bald Eagle in the Southeast Region."

Cordially,

Don A. Wood
Endangered Species Coordinator

666-9930/jh
ESC 6-1 (Lee County)
cc: Mr. Steve Nesbitt
Mr. Paul Schulz

MORRIS-DEPEW ASSOCIATES, INC.
ENGINEERS • PLANNERS • ENVIRONMENTAL SCIENTISTS

November 14, 1990

Mrs. Ruth H. Ray
19172 Cypress View Drive
Fort Myers, FL 33912

RE: Ruth Communications Tower

Dear Mrs. Ray:

As you are aware, the Florida Game and Fresh Water Fish Commission has determined that the above referenced project is inconsistent with the "Habitat Guidelines for the Bald Eagle in the Southeast Region." With the eagle's nest only 1300' away, the tower is deemed to be a significant navigational hazard, with or without guy-wires, lights, or streamers, pursuant to the agency's letter of October 16, 1990.

The negative response from the Florida Game and Fresh Water Fish Commission will make obtaining the necessary zoning for the tower nearly impossible. Lee County's zoning ordinance requires a special exception to be granted (by public hearing) for any communications tower of this size. As a part of the staff review of this request, the environmental staff from Lee County will have input. The negative response from the Florida Game and Fresh Water Fish Commission will trigger a negative recommendation from the county's environmental staff and the zoning staff member who is assigned the special exception request. Also, the Pine Island Community is fairly strong and very active and we would anticipate the surrounding property owners to attend the hearing and strongly voice their objections.

With a negative staff recommendation and opposition from the community, it would be extremely unlikely that our request would be approved. Therefore, it is for these reasons that we would recommend that you abandon this site as we do not believe it is possible to obtain the necessary local approvals for this site.

Mrs. Ruth H. Ray
19172 Cypress View Drive
Fort Myers, FL 33912

Pine Island is home to one of the largest concentrations of Bald Eagle nests in the Southeastern United States and we would recommend you contact our office once an alternative site is selected so that we can investigate the possibility of another nest.

If you have any questions, please do not hesitate to call.

Sincerely,

MORRIS-DEPEW ASSOCIATES, INC.


Robert D. Hutcherson
Senior Project Manager

RDH/kab

COMMERCE &
GROWTH

ENVIRON

Strict laws protect area wildlife, plants

By KEVIN LOLLAR
News-Press Staff Writer

Let's say you've just bought a chunk of Southwest Florida land, and you want to put up some condos and maybe a golf course.

Now let's say your land has a bunch of holes on it, and in these holes live funny-looking animals called gopher tortoises.

No sweat. Just clear the land. This is progress we're talking about. Gopher tortoises, indeed.

Indeed. Gopher tortoises are a protected species.

In January, Peter Schlesinger, managing partner for the Tamiami Trail Partnership, was fined \$60,000 for destroying 70 active gopher tortoise burrows on land in southern Lee County. Specifically, he pleaded no contest to 22 counts of taking a species of special concern.

Protected species fall into three categories: endangered, threatened and special concern.

These classifications are made and the laws are enforced by the state Game and Freshwater Fish Commission.

"There are laws on state and federal levels concerning destruction of habitat of protected species, but it's still up in the air; there are no rules yet," said Lt. Rip Stalvey, public information officer for the commission in Lakeland. "But there's also a law about incidental take — it's illegal to take or possess a protected animal; so if the developer goes in and destroys the gopher tortoises themselves, that's against the law."

Plenty of protected animals live in or near the waters around Florida — more than 100 of them. Developers don't need to worry about some of them — like the five species of whale swimming around out in the deep blue sea.

If you have bald eagles or burrowing owls or red-cockaded woodpeckers on your property, though, you'd better go easy with the bulldozer.

But the protected species list contains more than those high-profile animals and

others such as West Indian manatees, alligators, Florida panthers, brown pelicans and Atlantic loggerhead turtles.

You also have your lesser-known creatures: Choctawhatchee beach mice, Duke's saltmarsh voles, Bachman's warblers, Lake Eustis pupfish, harlequin darters, blue-tailed mole skinks, Suwannee cooters, bog frogs, Schaus' swallowtail butterfly, pillar coral and Stock Island tree snails.

Now, you as the landowner are saying, "OK, gopher tortoises, alligators and eagles are enough to keep me from clearing my land, but surely the Game and Fish folks can't be serious about protecting snails, skinks and cooters."

Well, they are.

"The law is the law, whether it's down to snails or the smallest fish," Stalvey said. "Several years ago in Tennessee, a little fish, the snail darter, stopped the construction of a whole dam. We don't place one animal in higher esteem than another. We give equal protection to all of them."

So, now you say, "OK, so I have my property way off somewhere in the pine flatwoods, so how are the Game and Fish guys going to know whether or not I have bog frogs or swallowtail butterflies on it?" Well, they do.

"State biologists have a reasonably good handle on where you encounter these species," Stalvey said. "In many instances, they're restricted to certain geographical areas, so we have a pretty good handle on where they're going to be."

It's not just animals developers have to be careful about.

Don't forget mangroves, which occupy an extremely important role in the environment. They provide protected nursery areas for fishes, crustaceans and shellfish; they provide food for marine species such as snook, snapper, tarpon, jack, sheepshead, red drum, oyster and shrimp.

Mangrove branches are rookeries for many coastal birds, including the brown pelican and roseate spoonbill, both of which are species of special concern.

See PROTECT, page 37

Protect From page 36

Mangrove roots act as natural filters, trapping organic materials and chemical elements.

To a developer, mangroves can really be a bother, and they routinely have been cut down to make way for waterfront homes.

But state and local regulations have been enacted to protect the Florida's mangroves.

They cannot be removed, pruned or disturbed on state or private land without a permit from the Florida Department of Environmental Regulation.

Historically Florida property owners have changed land that was unsuitable for building — drain it, clear it, build on it.

These days, it's not that easy. The state has decided to protect its wildlife and plant life.

ENDANGERED SPECIES

Here is a list of Florida's Endangered Species (E), Threatened Species (T) and Species of Special Concern (SSC). Species on both the state list and the list of the U.S. Fish and Wildlife Service are indicated with an asterisk. Source: Florida Almanac, 1990-91.

MAMMALS

Right whale (E)*
 Sei whale (E)*
 Finback whale (E)*
 Florida panther (E)*
 Humpback whale (E)*
 Gray bat (E)*
 Indiana bat (E)*
 Key Largo woodrat (E)*
 Key deer (E)*
 Key Largo cotton mouse (E)*
 Perdido Key beach mouse (E)*
 Sperm whale (E)*
 West Indian manatee (E)*
 Goff's pocket gopher (E)
 Silver rice rat (E)
 Chadwick Beach cotton mouse (E)
 Palmd beach mouse (E)
 Big Cypress fox squirrel (T)
 Everglades mink (T)
 Florida black bear (T)
 Sherman's short-tailed shrew (SSC)
 Duke's saltmarsh vole (SSC)
 Sanibel Island rice rat (SSC)

Florida mouse (SSC)
 Sherman's fox squirrel (SSC)
 Homosassa shrew (SSC)
 Eastern chipmunk (SSC)

BIRDS

Cape Sable seaside sparrow (E)*
 Florida grasshopper sparrow (E)*
 Ivory-billed woodpecker (E)*
 Kirtland's warbler (E)*
 Wood stork (E)*
 Snail kite (E)*
 Bachman's warbler (E)*
 Arctic peregrine falcon (E)
 Piping plover (T)*
 Bald eagle (T — federal: E)
 Red-cockaded woodpecker (T; federal: E)
 Florida scrub jay (T)*
 Crested caracara (T)*
 Roseate tern (T)*
 Southeastern snowy plover (T)
 White-crowned pigeon (T)
 Southeastern kestrel (T)
 Florida sandhill crane (T)
 Least tern (T)
 Roseate spoonbill (SSC)
 Wakulla seaside sparrow (SSC)
 Scott's seaside sparrow (SSC)
 Limpkin (SSC)
 Burrowing owl (SSC)
 Worthington's marsh

wren (SSC)
 Marican's marsh wren (SSC)
 Little blue heron (SSC)
 Reddish egret (SSC)
 Snowy egret (SSC)
 Tricolored heron (SSC)
 American oyster catcher (SSC)
 Brown pelican (SSC)
 Osprey (Monroe County only) (SSC)

FISH

Shortnose sturgeon (E)*
 Okaloosa darter (E)*
 Blackmouth shiner (E)
 Crystal darter (T)
 Key silverside (T)
 Atlantic sturgeon (SSC)
 Common snook (SSC)
 Lake Eustis pupfish (SSC)
 Harlequin darter (SSC)
 Southern tessellated darter (SSC)
 Saltmarsh topminnow (SSC)
 Suwannee bass (SSC)
 Shoal bass (SSC)
 Bluestripe shiner (SSC)
 Rivulus (SSC)
 Key blenny (SSC)

AMPHIBIANS AND REPTILES

Atlantic green turtle (E)*
 American crocodile (E)*
 Leatherback turtle (E)*
 Atlantic hawksbill turtle (E)*
 Atlantic ridley turtle (E)*
 Mud turtle (lower Keys) (E)

Atlantic loggerhead turtle (T)*
 Eastern indigo snake (T)*
 Atlantic salt marsh water snake (T)*
 Blue-tailed mole skink (T)*
 Sand skink (T)*
 Big Pine Key ringneck snake (T)
 Short-tailed snake (T)
 Miami black-headed snake (T)
 Florida brown snake (Keys only) (T)
 Florida ribbon snake (Keys only) (T)
 Alligator snapping turtle (SSC)
 Florida alligator (SSC)
 Suwannee cooter (SSC)
 Red rat snake (Keys only) (SSC)
 Florida Keys mole skink (SSC)
 Gopher tortoise (SSC)
 Barbour's map turtle (SSC)
 Georgia blind salamander (SSC)
 Pine Barrens tree frog (SSC)
 Florida pine snake (SSC)
 Gopher frog (SSC)
 Bog frog (SSC)

INVERTEBRATES

Schaus' swallowtail butterfly (E)*
 Pinar coral (E)
 Stock Island tree snail (E; federal T)
 Florida tree snail (SSC)

HABITAT MANAGEMENT GUIDELINES FOR THE BALD EAGLE IN THE SOUTHEAST REGION



FLORIDA GAME AND FRESH WATER FISH COMMISSION

WILLIAM G. BOSTICK, JR.
Chairman, Winter Haven

MRS. GILBERT W. HUMPHREY
Vice-Chairman, Maitland

THOMAS L. HIRS, SR.
Lake Wales

C. TOM RAINEY, D.V.M.
Miami

J.H. BARCO
Tampa

ROBERT M. BRANTLY, Executive Director
ALLAN L. EGBERT, Ph.D., Assistant Executive Director



FARRIS BRYANT BUILDING
620 South Meridian Street
Tallahassee, Florida 32399-1600
(904) 488-1965

MEMORANDUM

March 10, 1987

TO: Regional Planning Councils, Environmental Consultants and Other Concerned Persons

FROM: Colonel Robert M. Brantly, Executive Director, Florida Game and Fresh Water Fish Commission
James Pulliam, Jr., Regional Director, U.S. Fish and Wildlife Service *JMP* *by JWB*

SUBJECT: Revised Bald Eagle Habitat Management Guidelines

Enclosed for your reference and use is a copy of "Habitat Management Guidelines for the Bald Eagle in the Southeast Region." This publication represents a revision of and supersedes the guidelines which have been in effect over the past few years, and was jointly prepared by the Game and Fresh Water Fish Commission and the U.S. Fish and Wildlife Service. The primary purpose of the guidelines is to assist planners, consultants, developers and permitting entities in promoting prudent bald eagle conservation and in complying with the various state and federal laws protecting bald eagles and/or their nests when potential land use/eagle conflicts occur.

The Commission and Service will rigorously apply these guidelines on all appropriate occasions. They are provided to you and other interested parties to facilitate consistency and efficiency in resolving land use/eagle problems. We hope you find them useful and request your support and cooperation in their application.

W666/dr

ESC 6-1 (Eagle)

Enclosure

cc: Mr. David Wesley
Colonel Brantley Goodson
Mr. Frank Montalbano
Mr. Brad Hartman
Regional Directors

RECEIVED

APR 9 1987

DEPT. OF COMM. DEV. *Ray*

Introduction

These guidelines are published and issued by the U.S. Fish and Wildlife Service, Southeast Region, but were prepared in consultation with all the Southeastern State wildlife agencies and a number of bald eagle experts, with assistance from FWS solicitors. A number of Federal and State laws and/or regulations prohibit, cumulatively, such acts as harassing, disturbing, harming, molesting, pursuing, etc., bald eagles, or destroying their nests, (see Section IV); although advisory in nature, these guidelines represent a biological interpretation of what would constitute violations of one or more of such prohibited acts. Their purpose is to maintain and/or improve the environmental conditions that are required for the survival and well-being of bald eagles in the Southeastern United States, and are designated essentially for application in bald eagle/human activity (principally land development) conflicts. The emphasis is to avoid or minimize detrimental-human-related impacts on bald eagles, particularly during the nesting season.

General

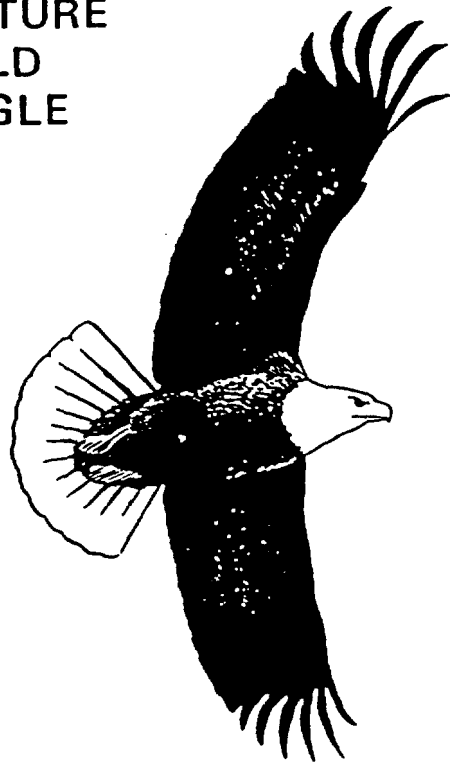
Individual bald eagle pairs exhibit considerable variation in response to human activity, depending in part upon the type, frequency, and duration of activity; extent of modification of the environment; time in the bird's reproductive cycle; and various other factors not well understood. Therefore, it cannot be predicted with absolute certainty the effects a given disturbance might have on a particular pair of bald eagles. Certain human activities are, however, known to disturb bald eagles more than others, and are addressed in the following sections as recommended restrictions. The guidelines are divided into sections on nesting, feeding, roosting, and legal considerations.

1. **NESTING:** In the Southeast, the bald eagle nesting period is usually from October 1 to May 15. However, in the northern portion of the range, nesting has occurred as late as August. Individual pairs return to their same territories year after year, and often territories are inherited by subsequent generations. Eagles are most vulnerable to disturbance early in the nesting period, i.e. during courtship, nest building, egg laying, incubation, and brooding (roughly the first 12 weeks of the nesting cycle). Disturbance during this critical period may lead to nest abandonment and/or chilled or overheated eggs or young. Human activity near a nest later in the nesting cycle may cause premature fledging, thereby lessening the chance of survival.

Loss of Nests or Nest Trees: Although bald eagle nests are legally protected, a nest in and of itself, from a biological perspective, is relatively inconsequential to a given pair of eagles (a pair can construct a nest in less than a week). It is the nest site that originally attracted the pair that is of critical importance. It is not uncommon for nests to be blown from trees by storms, after which the resident pairs typically renest on the same sites, often in the same trees. Therefore, in instances where nests, and even nest trees, are lost, these guidelines should continue to apply in their absence for a period extending through at least two complete breeding seasons subsequent to the loss.



MATURE
BALD
EAGLE



IMMATURE
BALD
EAGLE



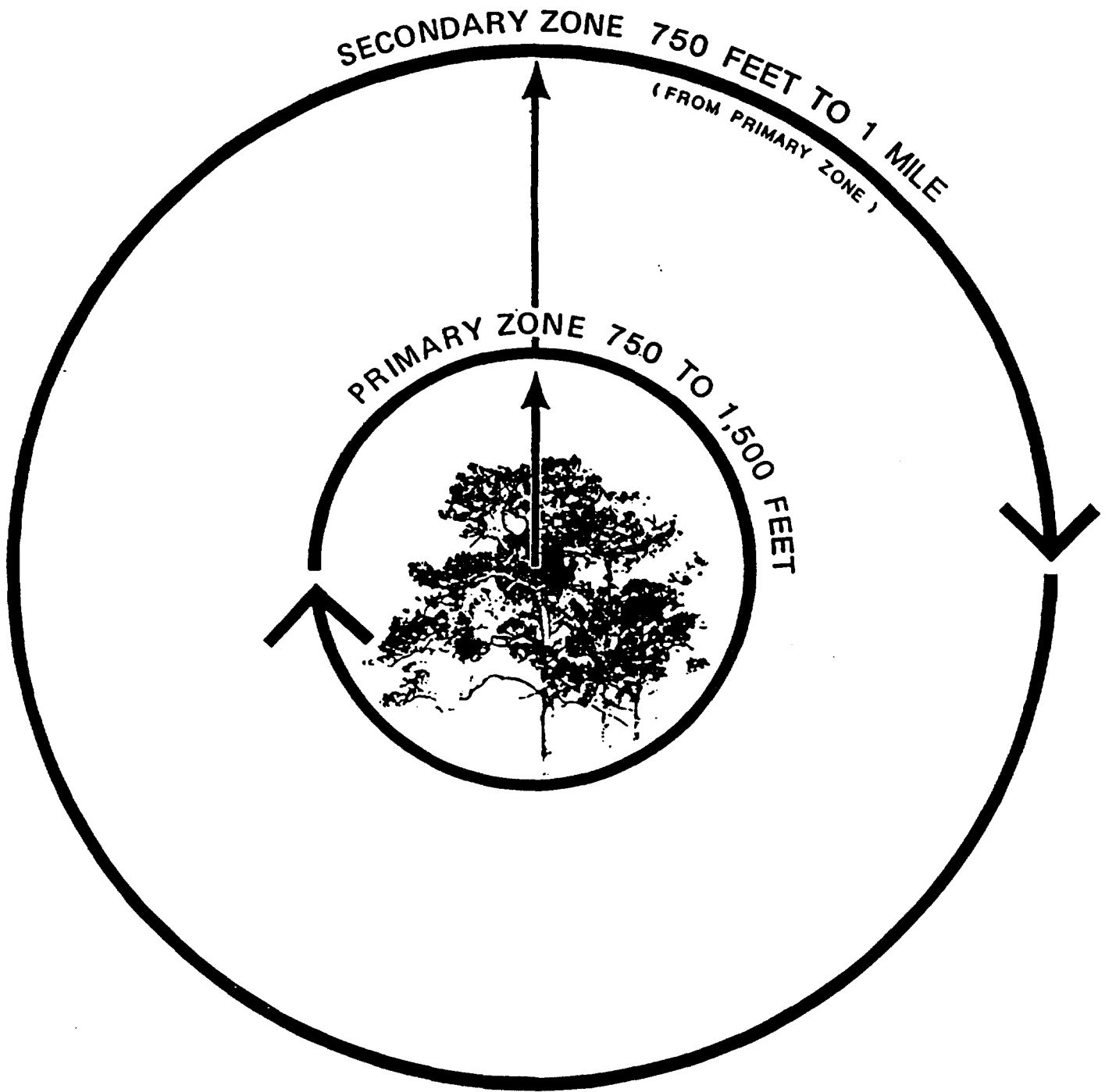
TO AVOID CONFUSION WITH MATURE
GOLDEN EAGLE REMEMBER:

- IMMATURE BALD EAGLES HAVE
WHITE ON WING LININGS
- AND DO NOT HAVE FEATHERS
EXTENDING TO TOES

"Abandoned" Nests: Bald eagles often use alternate nests in different years. Although all nests used by a given pair are situated in the same general vicinity, some nests go unused for several consecutive years and thereby may appear abandoned. Even a solitary nest can go unused for several years, often due to the death of one member of the resident pair, and then be reoccupied by either the original pair or one member of the original pair with a new mate. Even in instances where both members of a pair have died, the site would likely be taken over by another pair if no habitat degradation occurs. For these reasons, these guidelines should apply to apparently "abandoned" nests for a period extending at least through five consecutive breeding seasons of non-use.

Management Zones:

- A. **Primary Zone:** This is the most critical area and must be maintained to promote acceptable conditions for eagles.
 1. **Size:** Except under unusual circumstances, the primary zone should encompass an area extending from 750 to 1,500 feet outward from the nest tree. The precise radius distance between these two extremes would be dependent upon the proximal and spatial configuration of the critical elements (nest tree(s), feeding area, roost trees, etc.) within a particular nesting area, or other compelling factors.
 2. **Recommended Restrictions:**
 - a. Close proximity of the following activities to bald eagle nests are likely to have detrimental impacts on eagle nesting and, therefore, should not occur within the primary management zone at any time:
 - (1) Residential, commercial or industrial development, tree cutting, logging, construction and mining; and
 - (2) Use of chemicals toxic to wildlife.
 - b. The following activities would likely be detrimental while eagles are present and, therefore, should be restricted in the primary zone during the nesting period, but not necessarily during the non-nesting season:
 - (1) Unauthorized human entry; and
 - (2) Helicopter or fixed-wing aircraft operation within 500 feet vertical distance or 1,000 feet horizontal distance from a nest.



B. **Secondary Zone:** Restrictions in this zone are needed to minimize disturbance that might compromise the integrity of the primary zone and to protect important areas outside the primary zone. The secondary zone should be arranged so as to be contiguous with feeding areas and provide a protected access between nests and the feeding area. In some cases that would involve extending a corridor from the primary zone to a particular feeding area, with that corridor requiring the same restrictions as the secondary zone.

1. **Size:** The secondary zone should encompass an area extending outward from the boundary of the primary zone, a distance of 750 feet to 1 mile. The precise distance will be dependent upon site-specific circumstances.

2. **Recommended Restrictions:**

a. Certain activities within the secondary zone are likely to be detrimental to bald eagles and in most cases should be restricted. These activities include, but are not necessarily limited, to:

- (1) Development of new commercial and industrial sites;
- (2) Construction of multi-story buildings and high density housing developments between the nest and the eagles' feeding area;
- (3) Construction of new roads, trails, and canals which would tend to facilitate access to the nest; and
- (4) Use of chemicals toxic to wildlife, such as herbicides or pesticides.

b. Other activities may take place in the secondary zone, but only during the non-nesting period. Even intermittent use or activities of short duration during nesting are likely to constitute disturbance. Examples are logging, land clearing, construction, seismographic activities employing explosives, mining, oil well drilling, and low-level aircraft operations. Minor activities such as hiking, bird watching, fishing, camping, picnicking, hunting, and recreational off-road vehicle use may be permitted in the secondary zone at any time.

II. **FEEDING:** These guidelines are designed to enhance the quality of bald eagle feeding areas and eliminate or minimize human disturbance.

A. The use of toxic chemicals in watersheds and rivers where bald eagles feed should be prohibited.

B. Alteration of natural shorelines where bald eagles feed should be prevented or limited. Degraded shorelines should be rehabilitated where possible.

- C. Water quality in eagle feeding areas should be monitored and remedial steps taken when needed.

III. ROOSTING: These guidelines are designed to help preserve present roosting sites and provide future habitat.

A. Roosts within and adjacent to nesting territories

1. Within the primary management zone, no trees, living or dead, should be removed.
2. Within the secondary management zone, as many large trees as possible, living or dead, should be retained as roost and perch trees. Characteristically, these should be the larger trees in the stand. Trees with open crowns and stout lateral limbs are preferable.

B. Communal Roosts

1. There should be no significant logging, land clearing, or disruptive human activity within 1,500 feet of traditional roost sites.
2. Bald eagle roosting concentrations should be brought to the attention of the Fish and Wildlife Service or State wildlife agency so that a public or private agency can consider preservation of the roost by purchase, easement, or land exchange.

IV. LEGAL CONSIDERATIONS:

A. Federal Statutes:

1. The Bald Eagle Protection Act (16 U.S.C. 668-668d), and the regulations derived therefrom (50 CFR 22), state, in part, that no person "... shall take ... any bald eagle ... or any golden eagle, alive or dead, or any part, nest, or egg thereof ...," with 'take' meaning "... to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb" Whoever violates any part of the BEPA may be fined from \$5,000 to \$10,000 or imprisoned from 1 to 2 years or both.
2. Section 9 of the Endangered Species Act of 1973 (16 U.S.C. 1531), as amended, makes it unlawful to 'take' any listed species with 'take' meaning to "... harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct"

For persons who violate the provisions of Section 9, the penalties can be civil or criminal with fines of from \$5,000 to \$20,000 and/or imprisonment from 6 months to 1 year. Section 7 of the ESA requires that all Federal agencies ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of their critical habitat.

3. The Migratory Bird Treaty Act (16 U.S.C. 703-711) makes it unlawful "... to pursue, hunt, take, capture, kill, attempt to take, capture or kill, possess, ... offer for sale, sell, ... , any migratory bird, any part, nest or eggs of any such bird" Violators may be fined from \$500 to \$2,000 and/or imprisoned from 6 months to 2 years.

8. State Statutes

1. State of Alabama:

Section 9-11-232 of Alabama's Fish, Game and Wildlife regulations curtails the possession, sale, and purchase of wild birds. "Any person, firm, association, or corporation who takes, catches, kills or has in possession at any time, living or dead, any protected wild bird not a game bird or who sells or offers for sale, buys, purchases or offers to buy or purchase any such bird or exchange same for anything of value or who shall sell or expose for sale or buy any part of the plumage, skin or body of any bird protected by the laws of this state or who shall take or willfully destroy the nests of any wild bird or who shall have such nests or eggs of such birds in his possession, except as otherwise provided by law, shall be guilty of a misdemeanor. . . ." Section 9-11-236, which prohibits the hunting of or possession of protected birds during closed season and carries a fine of up to \$500, also protects eagles.

2. State of Arkansas:

Section 14.01 of the Official Codebook of Arkansas Game and Fish Commission Regulations states, "It shall be unlawful to take or attempt to take wild birds or bird eggs." A violation of this code carries a \$100 to \$500 fine.

3. State of Florida:

Rule 39-27.011 of the State of Florida Wildlife Code (Chapter 39, Florida Administrative Code) reads, "No person shall kill, attempt to kill, or wound any endangered or threatened species," and Rule 39-27.002(1) states, in part, "No person shall pursue, molest, harm, harass, capture or possess any endangered or threatened species or parts thereof or their nests or eggs" (The bald eagle is listed as a threatened species by the State of

State of Florida (cont'd):

Florida.) Violation of those regulations constitutes a second degree misdemeanor punishable by a \$500 fine and/or up to 60 days in jail.

4. State of Georgia:

State law 27-3-22, referring to wildlife, states, in part, "It shall be unlawful for any person to hunt, trap, take, possess, sell, purchase, ship, or transport any hawk, eagle, owl, or any other bird or any part, nest, or egg thereof"

5. State of Kentucky:

Chapter 150, Section 330, of the Kentucky Fish and Wildlife Codes, revised in 1986, reads ". . . No person shall take, pursue, possess, purchase or sell or attempt to do so, any migratory birds, except as authorized by the migratory bird treaty act (40 stat. 755) as amended and regulations under it" Section 183 prohibits the importing, transporting, or possessing of endangered wildlife.

6. State of Louisiana

Chapter 9, Section 1901.C., which was amended in 1981, prohibits or carefully regulates ". . . the taking, possession, transportation, exportation from the state, processing, sale, or offer for sale or shipment within the state of . . . endangered species." (Endangered or threatened species are defined as those covered under the Federal Endangered Species Act, as concurred in by the Louisiana Wildlife and Fisheries Commission.) The bald eagle is recognized as an endangered species in Louisiana.

7. State of Mississippi:

Section 49-5-7 of the Mississippi Code of 1972 reads, "No wild bird other than a game bird shall be pursued, taken, wounded, killed, captured, possessed, or exported at any time, dead or alive. No part of the plumage, skin, or body of any bird . . . shall be sold or had in possession for sale in this state. No person shall molest, take or destroy the nests or eggs of any wild bird, or have such nests in his possession" Section 49-5-109 states, ". . . it shall be unlawful for any person to take, possess, transport, export, process, sell or offer for sale or ship, and for any common or contract carrier knowingly to transport or receive for shipment any species or subspecies of wildlife appearing on the following lists: (1) the list of * wildlife indigenous to the state determined to be endangered within the State" (The bald eagle is listed as endangered in Mississippi.) Any person who violates these regulations will face a \$1,000 fine and/or imprisonment for up to 1 year.